(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

MISCELLANEOUS CIVIL APPLICATION NO. 930 OF 2004
IN
FIST APPEAL NO. 60 OF 1998

Office Notes, Office Memoranda of Quorum, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. R. G. Ramani, Advocate for the applicants/ori. respondents No. 1, 2A and 2B.

Mr. S. S. Kantak with Ms. Rakhi Chodankar, Advocates for the respondents/ori. appellants.

CORAM : B. H. MARLAPALLE, J.

DATE : 20th DECEMBER, 2004.

P.C. :

Heard Mr. Ramani and Mr. Kantak, the learned Counsel for the respective parties. This

application has been filed for speaking to the minutes i.e. typographical corrections in the order dated 29.10.04 passed in First Appeal Nos. 60 and 61 of 1998.

It is stated that in para 2 of the order dated 29.10.04, the sentence, " It was contended by them in the original Special Civil Suit No. 18/87 that the appellants/vendors i.e. respondent Nos. 3 to 9 did not own any land in survey No. 27/3 and, on the contrary, they had owned lands in survey No. 26 and part of survey No. 24 and this land was from matriz No. 202 of the same village", requires to be corrected as under :-

“ It was contended by them in the original Special Civil Suit No. 18/87 that the appellants/vendors i.e. respondent Nos. 3 to 9 did not own any land in survey No. 27/3 which was from matriz No. 202 and, on the contrary, they had owned lands in survey No. 26 and part of survey No. 24 and this land was from matriz No. 198 of the same village”.

In the said para No. 2, the words, “survey No. 26 and part of survey No. 24 with” are required to be deleted. Similarly, in para No. 3, the words “under matriz No. 198” as well as in para No. 5, the words “survey No. 26 and part of survey No. 24 with” and “survey No. 27/3 with” are also required to be deleted.

Hence, the order dated 29.10.04 is corrected and the said corrected order is as under :

1. The present respondents no.1 and 2 had filed Special Civil Suit No. 18/87 for declaration of the sale deed dated 1st January, 1987, is invalid as well as for injunction. The suit was subsequently amended for the relief of possession as well and came to be re-registered as Regular Civil Suit No. 74/97, whereas the remaining respondents i.e. respondent nos. 3 to 9 are the vendors of the appellants. The present appellants had also filed Special Civil Suit No. 52/92 for the relief of perpetual injunction against the present respondents. Both suits have been decided against the present

appellants by the trial Court and hence these appeals.

2. The appellants claim that the agricultural land admeasuring 30,000 sq. mts. was purchased by them from respondent nos. 3 to 9 by registered sale deed dated 1st January, 1987 and this land is from survey no. 27/3 and falls in matriz no. 198 of village Barcem. The present respondent nos. 1 and 2 disputed that the appellants had purchased land from survey no. 27/3 with matriz no. 198. It was contended by them in the original Special Civil Suit No. 18/87 that the appellants/vendors i.e. respondent nos. 3 to 9 did not own any land in survey no. 27/3 which was from matriz No. 202 and, on the contrary, they had owned

lands in survey no. 26 and part of survey no. 24 and this land was from matriz no. 198 of the same village. The trial Court has examined the boundaries of the suit land as set out in the sale deed (Exh. D.W.1/H) and held that the boundaries were not talling and, therefore, the sale deed could not be accepted as a valid document. The evidence on the other side as was placed before the trial Court, does not lead to the final determination regarding the identity of the suit property. The appellants claim that the suit property falls in survey no. 27/3 and matriz no. 198, whereas the respondent nos. 1 and 2 state that the suit property falls in matriz no. 202. The appellants/vendors have supported their case that the suit

property is from survey no. 27/3 with matriz no. 198. The evidence led by the appellants has not been found to be trust-worthy by the trial Court on the main point of the identity of the suit property.

3. It is not disputed that the appellants have executed the sale deed dated 1st January, 1987, and have purchased the agricultural land admeasuring 30,000 sq. mts. from the ownership of respondent nos. 3 to 9, who are the residents of the village Barcem and these vendors title to the agricultural land is not in dispute, save and except the identity of the land. The appellants/vendors have been in possession of the land from survey no. 27/3 for the last about 15 years and the respondent nos.

1 and 2 claim that they were wrongly put in possession and the land covered by the sale deed, if any, is not the land, which is in possession of the appellants as at present. They support the view taken by the trial Court. To put the controversy regarding the identity of the agricultural land covered by the sale deed at Exh.D.W.1/H at rest, it is necessary to cause the surveyor's report through the Director of Settlement and Land Records, Government of Goa, in respect of agricultural land holding of respondent nos. 3 to 9 and which was sold to the present appellants by the said sale deed. These appeals cannot be decided only on the basis of the evidence recorded before the trial Court and in the absence of the surveyor's

report.

4. It is, therefore, directed that the Director of Settlement and Land Records, Government of Goa, shall cause a fresh survey report regarding the land holding of Shri Narayan Dolo Gauncar, Smt. Premavati Narayan Gauncar, Shri Zorgo Tulo Velipo, Smt. Draupadi Zorgo Velip, Shri Zorgo Calsu Gauncar, Shri Govinda Sucdo Gauncar, Shri Rama Cantu Gauncar, Shri Nagu Puna Gauncar, Smt. Savitri Nagu Gauncar and Shri Chimbot Zori Gauncar, residents of Barcem and submit a report to this Court within four weeks from today. The report will indicate whether the land owned by these persons and purportedly sold to the appellants vide sale

deed dated 1st January, 1987, falls in matriz no. 202, or it falls in matriz no. 198. In short, it would be necessary to identify the agricultural land in matriz no. 198 as well as 202 vis-a-vis the survey plan. Needless to mention that the Director of Settlement and Land Records will issue notice to the respective parties and ask them to remain present on the spot on a given date.

5. A copy of this Order be forwarded to the Director of Settlement and Land Records, Government of Goa, forthwith and the said Officer shall submit the report through the learned Government advocate within the time specified hereinabove.

6. S.O. for four weeks. Not to be treated as part-heard.

Issue fresh writ as per the corrected order. Misc. Civil Application is disposed of accordingly.

B. H. MARLAPALLE, J.

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